A. The State Appellate Court Properly Identified the Existence of a Relevant Public Controversy Related to the Mileck Dump

Petitioner argues in her petition that the lower court in this case failed to identify a relevant public controversy. Pet. at 13. In making this claim, Petitioner attempts to evade the significance of the Mileck Dump dispute. As set forth above, the Mileck Dump had been the focus of a neighborhood group protest and legal action for years, and had been satirized in Petitioner's own political cartoons. The neighborhood group and others opposing the Dump continued their activity at the public hearing over the dump in May, 1998. As such, the public was not only debating the Dump; members of the community were actively and publicly fighting against it.

The article series in the AVA *continued* the public debate over Mileck and focused on the role of the parties in this case in that dispute. Petitioner attempts to question the public nature of the dispute by ignoring the connection between the public neighborhood challenges at the Mileck hearings, and the subsequent press coverage – an attempt correctly rejected by the state Court of Appeal. *See* Pet. at A-29.

B. Contrary to Petitioner's Assertion, the Court of Appeal Did Not Ignore the Requirement That a Plaintiff Must Have Injected Herself Into a Public Controversy in Order to be a Limited Purpose Public Figure

Throughout section I of her petition, Petitioner disputes, as she did below, that she injected herself into the public debate surrounding the Mileck Dump. Again, her

disagreement with the state appellate court over this finding is not a proper grounds for review by this Court, and is badly misplaced.

First, Petitioner attempts to downplay her role at Mileck by asserting that mere attendance at a public hearing is insufficient to support a limited purpose public figure finding. Pet. at 14. Yet, as the state appellate court recognized, Miles' participation at the hearing was more than mere attendance. Carrying the weight of her known reputation as an environmental activist and local political commentator, Miles took a leadership role in the neighborhood opposition at the dump hearings, engaged with the Sierra Club leadership in an attempt to increase opposition resources, and ultimately sparred with that leadership when she was unsatisfied with the Club's participation at Mileck.

Petitioner also, as she did below, disputes the evidentiary record which supported a finding that she assisted her friend Robert Anderson in his articles critical of the Sierra Club's role at Mileck, just as she ignores her own article on the controversy. (See RT 617:13-619:18, 650:9-651:2, 736:24-738:3, 1250:16-1252:15, 1256:13-15, 1331:3-1332:4) Miles' stubborn refusal to accept the implication of involvement in the press series created by her own, and other key witnesses' testimony is not a proper subject for review by this Court. The state appellate court considered this evidence, and rejected Appellant's claim that she was not involved in the articles criticizing the Sierra Club. Pet at A-32, 33.

Additionally, Petitioner's observation that she did not copy the press with her subsequent letter-writing campaign against the same local leadership of the Sierra Club

is irrelevant given the wealth of evidence in the record – cited by the Court of Appeal – that Petitioner participated in *public* hearings and engaged the *public* through the local media. Pet. at 15, A-32. The fact that some of Petitioner's conduct was not made public does not preclude her from being deemed a limited purpose public figure. No court has adopted a rigid formula that *all* of the plaintiff's conduct that relates to a public controversy must be in the public view in order for the plaintiff to be a limited public figure. *See, e.g. Waldbaum v. Fairchild Publications., Inc.*, 627 F.2d 1287, 1299-1301 (D.C. Cir. 1980) (no requirement that all aspects of CEO's management be public for him to be limited purpose public figure). Any such a mechanical standard would eviscerate public figure speech protections by allowing individuals who have voluntarily injected themselves into a public controversy to shield some portion of their conduct from criticism regardless of its relevance to the public debate. Once again, the Court of Appeal below correctly determined that Petitioner's voluntary participation in the Mileck Dump controversy in tandem with the press coverage critical of the Sierra Club which she helped generate made her a limited purpose public figure in relation to her related campaign against the Sierra Club. Pet. at A-39 – A-40.

C. The Court of Appeal Correctly Determined That the March 31, 1999 Letter Was Germane to the Public Controversy Over the Mileck Dump, and the Sierra Club's Role in the Local Environmental Dispute

Miles' Petition relies on yet another factual contention rejected by the lower court in asserting that the "defamation in the March 31, 1999 letter had nothing to do with

that issue [concerning the effectiveness of the Sierra Club Group]." Pet. at 17. The state Court of Appeal found that the March 1999 letter was "intimately connected" to the dispute over the Sierra Club's role and effectiveness in the Mileck Dump controversy. As a result, the state Court of Appeal expressly "reject[ed] Miles' attempts to dismiss th[e] link between the Mileck dump issue and her challenge to the local Sierra Club group's leadership." Pet. at A-34 n.24. The record clearly supports that determination.

Petitioner's campaign against the local leadership of the Club began *immediately* on the heels of the press coverage in the AVA of the Mileck Dump and the Sierra Club's effectiveness. The letter-writing campaign, which included the records demand to the local group, relied on the same criticisms of the local leadership's effectiveness that Petitioner raised during the Mileck Dump hearings and press coverage. The individual Respondents' letter indisputably challenged Petitioner's motives and mental state behind her attack on the local leadership, and therefore was clearly germane to the relevant controversy. *See Waldbaum*, 627 F.2d 1287, 1298 (discussion of plaintiff's "talents, education, experience, and motives" are relevant to public's decision to listen to plaintiff). The Appellate Court's determination of germaneness was both correct and consistent with applicable authority.

D. Petitioner's Contention That "Unrelated" Prior Conduct Cannot be Considered Under the *Gertz* Test Is Both Irrelevant to this Case and Incorrect

Petitioner also asks this Court to grant certiorari to determine whether prior, "unrelated" conduct is relevant to an individual's classification as a limited purpose public

figure. Pet. at 27. Certiorari should be denied because the California Court of Appeal found that, on the facts of *this* case, all of the conduct considered by the lower court – including Miles' publication of political cartoons on subjects that included local environmental issues such as the Mileck Dump – *was* related to the controversy surrounding the effectiveness of the Mendo/Lake Group of the Sierra Club. With respect to the cartoons, the lower court found that their vividness, the intensity of local interest in them, and the closeness in time between their publication and the long-standing Mileck dispute render them related and relevant to the limited purpose public figure question. Pet at A-34 – A-35.

Further, the lower court indisputably considered Miles' long record of political commentary and activism as background for evaluating her access to press, the likelihood that her participation at Mileck was part of an affirmative attempt to effect the outcome of a particular public debate, and the likelihood that the public would discuss and debate her role in that controversy. Pet. A-38 – A-39. In challenging this use of relevant background information, Petitioner apparently reads the *Gertz* opinion and its progeny as requiring that defamation plaintiffs' conduct in a particular public dispute be considered completely in isolation from the plaintiffs' background, experience and expertise. No court has articulated such a standard that would handcuff courts in their attempt to understand a plaintiff's role in a particular debate, and the Court should decline to consider such an extreme argument.

II. PETITIONER HAS NOT DEMONSTRATED A CONFLICT AMONG THE FEDERAL OR STATE COURTS REGARDING THE SCOPE AND/OR APPLICATION OF THE LIMITED PURPOSE PUBLIC FIGURE DOCTRINE THAT WOULD WARRANT REVIEW OF THE OPINION BELOW

The legal principles that govern the decision in this case have been well established by this Court and the federal courts generally for nearly three decades, since this Court's decision in *Gertz*. Nevertheless, Petitioner seeks to have this case reviewed because of the supposed necessity of "flesh[ing] out the skeletal descriptions" of public figures and private persons under the limited purpose public figure doctrine. Pet. at 19.

In the *Gertz* opinion itself, this Court recognized that, given the myriad of factual scenarios involving participation in public debate, the public figure test would be best served by "broad rules of general application." From that first opinion, this Court therefore properly rejected the Petitioner's invitation to create more factually-specific tests that would, in effect, require the Court to "scrutinize carefully every jury verdict in every libel case." *Id.* at 343-44.

Petitioner's complaint with *Gertz* and its progeny does not point to any significant, substantive dispute among courts in relation to the applicable standard. Nor does she articulate any particular, more specific standard that should prevail. As such, particularly given the proper application of the standard by the lower court in this case, the petition should be rejected.

A. Courts, Including The Lower Court In This Case, Consistently Require That the Defamation Relate to an Existing Public Controversy

In seeking review by this Court, Petitioner makes the remarkable observation that the courts have been *consistent* in their application of the *Gertz* standard. Pet. at 21-22. As Petitioner concedes, the D.C. Circuit Court of Appeal recognized in 1980 that *Gertz* mandated that the defamatory communication relate to an existing public controversy in order for the plaintiff to be a limited purpose public figure. *Waldbaum*, 627 F.2d 1287, 1296, 197 (D.C. Cir. 1980).

As discussed above, the state Court of Appeal determined that a direct link existed between the Mileck Dump controversy, the subsequent public exchange between the parties over the effectiveness of the Sierra Club, and the defamatory communication. The lower court therefore followed precisely the well-settled standard for the limited purpose public figure determination. Again, Petitioner's refusal to accept the link found by the lower court is not sufficient to warrant review by this Court.

B. Courts Consistently Hold That a Limited Purpose Public Figure Must Have Thrust Herself Into a Public Controversy in Order to Affect the Resolution of the Issues Involved

Equally untenable is Petitioner's claim that "[a] number of lower courts, including the Court of Appeal in this case, are in direct conflict with this Court's requirement of a high threshold of public activity for an individual to become a limited purpose public figure." Pet. at 22.

Plaintiff's citation to a handful of cases that have outcomes she questions, on its face, is insufficient to establish a conflict worthy of Supreme Court review. Notably, she does not claim that any of these cases ignored the *Gertz* requirement that plaintiff "have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved." *Id.* at 345.

In fact, Petitioner begins by citing *Lohrenz v. Donnelly*, 350 F.3d 1272 (D.C. Cir. 2003), a D.C. Circuit opinion which expressly followed both this Court's *Gertz* ruling and the *Waldbaum* decision relied on extensively by Petitioner. Pet. at 23. Petitioner takes issue with the determination of the *Lohrenz* court that the decision by the female plaintiff to accept a role as a combat fighter pilot unquestionably was a voluntary act which knowingly thrust herself into an existing public controversy. According to the *Lohrenz* court, that act, coupled with the plaintiff's ready access to media channels, was sufficient to make her a limited purpose public figure. *Id.* at 1281-82. Petitioner's complaint about *Lohrenz* apparently focuses on the volume of public conduct, a factor that appears to relate to no standard in any case she cites. Petitioner's argument with the result of *Lohrenz* does not point to the existence of any significant conflict among the courts nor any pressing need for further clarification of *Gertz*.

The remaining decisions that Petitioner claims are inconsistent with *Gertz* or in conflict with other rulings in other jurisdictions, also reflect, at most, courts applying consistent principles to a variety of challenging factual scenarios at the threshold of the public/private figure distinction. *See Marcone v. Penthouse International Magazine for Men*, 754 F.2d 1072 (3d Cir. 1985) (attorney was a public figure in controversy over drug trafficking because

his indictment as part of a drug trafficking ring and his representation of gang members was highly publicized; he voluntarily associated himself with gangs that he knew were the subject of media attention); *Rosanova v. Playboy Enterprises*, 580 F.2d 859 (5th Cir. 1979) (plaintiff's highly publicized criminal activities and his associations with organized crime, coupled with his voluntary associations with public personalities, warranted the imposition of public figure status as it related to the public controversy surrounding organized crime); *Faigin v. Kelly*, 978 F. Supp. 420 (D.M.H. 1997) (sports agent who had regular contact with the press, periodically appeared on radio and television shows and promoted himself nationally, thrust himself to the forefront of a high-profile community of sports agents that attracted media attention). The existence of difficult cases does not create a need for this Court to review the *Gertz* standard even if reasonable judges would disagree over the outcomes of those specific cases.

Finally, even if some deep "rift" did exist over the amount of public conduct needed to satisfy the public figure standard, this case would not be an appropriate vehicle for addressing that issue. As the lower court correctly recognized, Petitioner's participation in the Mileck Dump controversy, and the subsequent targeting of the local Sierra Club leadership, would likely satisfy any of the courts she cites that she was a limited purpose public figure.

C. Courts, Including the Court Below, Have Consistently Held That the Defamatory Statements Must Be Germane to the Public Controversy at Issue

As set forth in section I.C., above, the state appellate court in this case unquestionably determined that the defamation at issue in this case was germane to the Mileck Dump dispute and the subsequent, linked criticism of the Sierra Club's effectiveness. As such, Petitioner's recitation of the non-controversial requirement that the defamation relate to a public dispute (Pet. at 26) provides no grounds for granting this writ.

D. The California Court of Appeal's Consideration of Miles' Prior Conduct Fits Squarely With the Consistent Decisions of Other Courts

Petitioner concedes that the D.C. Circuit's widely-cited *Waldbaum* decision recognized the propriety of considering a plaintiff's background in evaluating that plaintiff's participation in a specific public controversy. Pet. at 27-28. Similarly, in this case, the state Court of Appeal considered Miles' history of activism and political cartoons in evaluating the voluntariness of her participation in the Mileck dispute, and its likely impact on the public. Nothing in *Gertz* or this Court's public figure jurisprudence suggests that such an evaluation is improper.

Nevertheless, Petitioner seeks to manufacture a conflict of law by relying on the California Supreme Court's decision in *Khawar v. Globe Internat., Inc.*, 19 Cal.4th 254 (1998) In *Khawar,* the California Supreme

Court held that the plaintiff's decision to stand near Robert Kennedy shortly before he was assassinated could not establish plaintiff as a limited purpose public figure in relation to the public controversy surrounding the assassination "because there was no way the plaintiff could have known the senator would soon be assassinated." *Khawar*, 19 Cal.4th 254, 266-67 (1998).

The court in *Khawar* did not, as Petitioner contends, hold that a libel plaintiff's conduct occurring before the relevant controversy is *per se* irrelevant to the limited purpose public figure determination. Instead, the California Supreme Court merely recognized that in relation to the unique and unanticipated dramatic events in that case, the unsuspecting plaintiff's prior conduct could not be relevant.

It is a very different matter for a court to consider the background of an environmental activist and political commentator who involves herself in an ongoing local environmental dispute. No case cited by plaintiff has held or suggested that consideration of the plaintiff's background in such circumstances is improper. As such, no conflict exists warranting granting of the Petition in this case.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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In The

Supreme Court of the United States

MARY MILES,

Petitioner,

v.

SIERRA CLUB et al.,

Respondents.

On Petition For A Writ Of Certiorari To The Court Of Appeal Of The State Of California, First Appellate District

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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INTRODUCTION

Recognizing that petitioner Mary Miles never engaged in any public conduct designed to affect the outcome of the "public controversy" identified by the Court of Appeal, respondents Sierra Club, *et al.* introduce a different controversy in an attempt to show that Miles was a limited purpose public figure.

But the public conduct this Court has consistently held to be a prerequisite for imposing the burdens of the public figure classification on private individuals is absent from this case. Unfortunately, in the quarter century since this Court last addressed that classification, the lower courts have reached widely conflicting results in thousands of such cases. While ostensibly claiming to follow this Court's precedents, lower courts have often denied recovery to deserving libel victims who have done nothing to expose themselves to the risk of being defamed.

Respondents barely acknowledge the chaotic state of the case law in the courts below, while selectively embracing a line of cases that has treated private individuals as public figures even though they made no public effort to affect the outcome of any public controversy.

A jury in this case unanimously found that respondents published false, defamatory statements about Miles in their March 31, 1999 letter. It is undisputed that Miles was never an all-purpose public figure. Miles took no public steps to affect the outcome of either alleged controversy, and neither controversy "gave rise" to the defamatory statements in the letter.

The Court should grant this petition.

ARGUMENT

THE CONSTITUTION REQUIRES ONLY THOSE WHO HAVE ENGAGED IN PUBLIC CONDUCT TO AFFECT THE OUTCOME OF A PARTICULAR PUBLIC CONTROVERSY TO BE CLASSIFIED AS LIMITED PURPOSE PUBLIC FIGURES

A. Respondents' Disagreement With The Court Of Appeal Over The Identification Of The Relevant Public Controversy Reinforces The Need For The Court To Clarify The Public Controversy Requirement

After acknowledging that a defamed individual can be classified as a limited purpose public figure only if she "has voluntarily injected herself into a specific public controversy in order to affect its outcome," Brief for the Respondents In Opposition to Petition for Writ of Certiorari ("RB") 6, respondents insist that the Court of Appeal identified "the Mileck Dump" as the relevant public controversy in this case. RB 7.

This is not true. The Court of Appeal "defin[ed] the public controversy as whether the Mendocino/Lake Group of the Sierra Club was performing as effectively as local environmentalists would wish," a controversy that the court determined had arisen *after* the Mileck dump hearing. App. A at A-36.

While respondents agree that the identification of a particular public controversy is a threshold requirement for classifying someone as a limited purpose public figure, RB 13, their implicit recognition that the Court of Appeal identified the wrong controversy reinforces the need for this Court to clarify the "particular public controvers[y]"

requirement established in *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 345 (1974) ("*Gertz*").

B. This Court Should End The Conflict In The Lower Courts By Reaffirming That The Limited Purpose Public Figure Classification Applies Only To Those Who Have Voluntarily Thrust Themselves Into A Particular Public Controversy

There was, of course, no public controversy over the effectiveness of the local Sierra Club Group. Miles' efforts to form an inland group consisted solely of private letters to Sierra Club officials, and she made no effort to discuss the issue with the public or the media. Petition for a Writ of Certiorari ("Pet.") 3, 7-8, 13-16, 21-25. Under *Gertz*, 418 U.S. at 345, 351-52, the lack of any public conduct in connection with an actual public controversy should have ensured that Miles would be considered a private individual.

Respondents argue that, "no court has adopted a rigid formula that *all* of the plaintiff's conduct that relates to a public controversy must be in the public view." RB 8-9 (emphasis in original). While even all-purpose public figures necessarily engage in some private conduct, respondents' argument ignores the irreducible, defining quality of every limited purpose public figure – some form of *public* conduct undertaken to influence the outcome of a particular public controversy. *Gertz*, 418 U.S. at 345, 351-52; *Time, Inc. v. Firestone*, 424 U.S. 448, 453-54 (1976); *Wolston v. Reader's Digest Association, Inc.*, 443 U.S. 157, 166-67 (1979); *Khawar v. Globe Internat., Inc.*, 19 Cal. 4th 254, 266-67 (1998).

Even accepting respondents' claim that the public controversy was the Mileck dump, not the effectiveness of the local Sierra Club Group, there was no public conduct related to the Mileck dump sufficient to require Miles to shoulder the burdens imposed on limited purpose public figures. Attendance at a public hearing is insufficient to confer public figure status on a private individual, *Gertz*, 418 U.S. at 352; Pet. 14.[1]

In an effort to bolster their claim that Miles was a limited purpose public figure despite the absence of public conduct, respondents argue that she was an "activist" and point to her publication of political cartoons in the past. RB 1-2, 7-11, 13-17.

Although such factors should be relevant only if the plaintiff was an all-purpose public figure who has achieved "general fame or notoriety in the community, and pervasive involvement in the affairs of society," *Gertz*, 418 U.S. at 351-52, respondents derive support for their position from a line of federal court cases that have obliterated the careful distinctions laid down by this Court between the different types of public figures. RB 13-15.

Ignoring the Circuit and state courts that follow this Court's holdings, Pet. 24-25, respondents contend that decisions of the Third, Fifth and District of Columbia Circuits, and the District of New Hampshire, do not

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[1] Miles will not attempt to correct all of the misstatements of fact in the RB; but respondents' repeated claim that Miles had addressed the Mileck dump in her cartoons, RB 2, 7, 11, is entirely fabricated. Miles' last cartoon was published in 1996, two years before the Mileck issue arose. App. A at A-35; Reporter's Transcript ("RT") 602, 1233. There was no evidence that Miles took a leadership role at the hearing or played any role in the Rob Anderson column. RT 264-65, 618-20, 650-51.

conflict with *Gertz* and its progeny, even though the court in each instance classified the plaintiffs as limited purpose public figures without any evidence that the defamed individuals had attempted to affect the outcome of a particular public controversy.[2]

Respondents even contend, RB 14, that Miles has not claimed that these rogue cases ignore *Gertz*, though that is precisely what they do and exactly what she has argued. Pet. 22-25. These holdings require relatively obscure individuals to meet an often insurmountable burden of proof even when they have done nothing to voluntarily inject themselves into a particular public controversy. In jurisdictions governed by these cases, this Court's attempt to "define the proper accommodation between the law of defamation and the freedoms of speech and press protected by the First Amendment" has been seriously compromised. *Gertz*, 418 U.S. at 325.

While acknowledging the possibility of "some deep 'rift,'" RB 15, between respondents' favored cases and those cited by Miles, respondents argue that this case would "not be an appropriate vehicle for addressing that issue," claiming Miles would be considered a limited purpose public figure under any test. But this case would actually be an excellent vehicle for this Court to re-establish the proper Constitutional accommodation and resolve the conflict in the courts below over whether the First Amendment requires public conduct in a particular

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[2] *Lohrenz v. Donnelly*, 350 F.3d 1272, 1278-82 (D.C. Cir. 2003); *Marcone v. Penthouse International Magazine for Men*, 754 F.2d 1072, 1082-87 (3d Cir. 1985); *Rosanova v. Playboy Enterprises*, 580 F.2d 859, 860 (5th Cir. 1979); *Faigin v. Kelly*, 978 F.Supp. 420, 427-28 (D.N.H. 1997).

public controversy for limited purpose public figure classification. The respondents point to no case imposing limited purpose public figure status on an individual for such activities as writing private correspondence.

Even if Miles were an activist,[3] this Court has repeatedly held that "participation in community and professional affairs" does not obviate the requirement that, to be a limited purpose public figure, she must also engage in public conduct in relation to a specific public controversy. *Gertz*, 418 U.S. at 352. *Gertz*, 418 U.S. at 325-26, 351-52, and *Firestone*, 424 U.S. at 453-54, held that even prominent people are not limited purpose public figures unless they voluntarily participate in a specific, subsequent controversy so as to affect its outcome.

In the absence of any claim that Miles was an all-purpose public figure, the question of whether she was an activist has no bearing on her classification. *Gertz*, 418 U.S. at 352.

C. Certiorari Should Be Granted To Resolve The Conflict In The Lower Courts Over Whether Prior Conduct Can Make An Individual A Limited Purpose Public Figure In A Subsequent, Unrelated Public Controversy

Similarly, this case provides the Court with a perfect opportunity to establish that prior, unrelated conduct – such as Miles' cartoons – does not transform a private

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[3] The only witness who identified Miles as an activist also stated that she was "the most non-public figure I know." RT 522.

individual into a limited purpose public figure in a subsequent public controversy. RB 10-11, 16-17; App. A at A-34-35; Pet. 18-19, 27-28.

There is no need, as respondents suggest, RB 16, for Miles to "seek to manufacture a conflict of law" on this issue, because there is a square conflict between the decisions of the District of Columbia Circuit,[4] and the holdings of this Court and the California Supreme Court. *Khawar v. Globe Internat., Inc.*, 19 Cal. 4th 254 (1998) ("*Khawar*").

Respondents are simply wrong to insist that *Khawar* did not establish a *per se* rule regarding prior conduct, RB 17; *Khawar* held that a plaintiff's conduct that occurred before the relevant controversy arose was "of no legal significance" in the limited purpose public figure determination. *Khawar*, 19 Cal. 4th at 266-67. Under *Khawar*, Miles' cartoons, for example, are clearly inadmissible, because they occurred before the controversy arose; but a court following *Clyburn* would admit the cartoons.

Basing limited purpose public figure classification on prior, unrelated conduct negates the *Gertz* distinction between all-purpose and limited purpose public figures, improperly subjecting "all aspects" of every libel plaintiff's life to the public figure inquiry. *Gertz*, 418 U.S. at 352.

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[4] *Clyburn v. News World Communications, Inc.*, 903 F.2d 29, 33 (D.C. Cir. 1990); *Waldbaum v. Fairchild Publications, Inc.*, 627 F.2d 1287, 1297-98 (D.C. Cir. 1980).

D. Unless An Individual's Participation In A Public Controversy Gives Rise To The Defamation, She Cannot Be Considered A Limited Purpose Public Figure

Respondents have no legal or factual support for their claim that the defamatory statements in their letter were "germane" to either of the alleged public controversies. RB 9-10, 16. Respondents' defamatory March 31, 1999 letter makes no reference to the Mileck dump or to the July 1998 articles, and the letter itself states that it is in response to Carl Pope's March 30, 1999 directive that the Group produce the records that Miles had requested. App. F at A-51; RT 1051-52.

Although *Gertz*, 418 U.S. at 352, requires that the individual's public conduct in a particular public controversy must "giv[e] rise" to the defamation, respondents do not even attempt to show that Miles' conduct gave rise to the letter's false and defamatory statements that, for example, Miles was a "most dangerous paranoid schizophrenic" who had been "institutionalized." App. F at A-53-54. Even using the "germane" standard enunciated in *Waldbaum v. Fairchild Publications, Inc.*, 627 F.2d 1287, 1298 (D.C. Cir. 1980) and relied on by respondents, these outrageous libels did not pertain to Miles' "talents, education, experience, and motives." RB 10.

This abandonment of the "giving rise" requirement by the Court of Appeal and certain other lower courts, Pet. 26-27, is a significant conflict regarding the proper determination of limited purpose public figure status that this Court should resolve.

CONCLUSION

The First Amendment does not require any special protection for those who destroy the reputations of private figures. *Gertz*, 418 U.S. at 343.

As this Court has also recognized:

> [T]here is no constitutional value in false statements of fact. Neither the intentional lie nor the careless error materially advances society's interest in "uninhibited, robust, and wide-open" debate on public issues.

Gertz, 418 U.S. at 340, quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

For all the above reasons, a writ of certiorari should issue to the Court of Appeal of California, First Appellate District.

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